IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 249 OF 2006

Kedar @ Pandurang Prakash Pathak. ...Applicant
V/s.
The State of Maharashtra. ...Respondent

Ms.Revati Mohite Dere for Applicant.
Mr.R.Y. Mirza, APP for the State.

CORAM : V.M. KANADE, J.

DATED : FEBRUARY 17, 2006

P.C. :-

. Heard learned Counsel for the applicant and learned APP for the State.

. The applicant was arrested on 1st July, 2005 in connection with a complaint which was lodged by Tanaji Asavale on 24th June, 2005 at Vadgaon Maval Police Station, Pune, in which it was alleged that his brother Balraje Asavale was murdered by Ajay Shelar, Kishore Bhegade and three unknown persons and therefore, the offence punishable under Sections 302, 120B read with Section 34 of the IPC was lodged at the said police station.

2. The applicant was arrested on 1st July, 2005. The identification parade was held on 30th July, 2005. Four eye witnesses Vikram, Vishal, Dattatraya and Mandabai have witnessed the said incident. Out of these witnesses, three eye witnesses have identified the applicant. The statement of these witnesses was recorded on 9th July, 2005 i.e. almost after eight days after the arrest of the applicant. Further, the complainant, who had immediately seen the incident after he came out of the shop and saw the three unknown persons, was not brought before the identification parade by the investigating officer and therefore, he has not identified the present applicant. There is no recovery at the instance of the present applicant. From the chargesheet, it can be seen that one of the eye witnesses has stated that the applicant was having a revolver and he had fired the bullet at the deceased. The other two co-accused viz. Kishore and Ajay Shelar have been released on bail.

3. In my view, taking into consideration the material which is on record, prima facie case has been

made out by the applicant for grant of bail. There is discrepancy between the statement of the eye witnesses regarding the use of weapon by the present applicant. Witness Dattatraya states that the applicant was having revolver whereas the other eye witness Vishal states that he had used the sickle (Koyta). The Investigating Officer did not bring the complainant in the identification parade. The statement of the other eye witnesses has been recorded almost after eight days after the arrest of the applicant. In view of these discrepancies in the evidence, the applicant is entitled to be released on bail.

. The applicant be released on bail in the sum or Rs.5000/- with one or two sureties in the like amount. The applicant shall report to Vadgaon Maval Police Station, Pune, once in a week during the pendency of the trial.

. The application is disposed of in the above terms.

(V.M. KANADE, J.)